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powers that they constitute the greatest forward step ever made in the history of peace and arbitration.

Second. The device of the Commission of Inquiry is probably destined to play a more important rôle in these treaties than even their "all-inclusiveness." Here at last we have the international analogue of the "jury of presentment" or "grand jury" in private law. These commissions will be watched with intense interest by all students of comparative law.

Third. The "special agreement" in each case to arbitrate shall be made on the part of the United States by the President "by and with the consent of the Senate thereof." This means that the Senate will be in honor bound to refer all justiciable disputes to arbitration, but that it will be consulted in framing the preliminary "special agreement" defining the dispute and the scope of the proposed arbitration. Of course the Senate, under this somewhat elastic provision, might so emasculate the agreement as to prevent its acceptance by the opposing power; still such a contingency is so unlikely as to be a practical impossibility. Whether the Senate, however, will take the view that this whole clause signs away its constitutional prerogatives remains to be seen.

It is almost inconceivable, however, that the Senate will refuse to ratify these two great treaties. The President and Secretary Knox believe that all Senatorial prerogatives are fully conserved, and there are no better constitutional lawyers in the Upper House.

Still, now is the critical time. Any political or civic organization, any newspaper or individual that has influence with the Senate or with any Senator should exert it now.

If these treaties fail, the cause of universal peace will be set back a generation. Their importance cannot be overestimated.

Unlimited arbitration is the beginning of the end of war. As surely as daylight follows dawn, these treaties, once ratified, will be followed by similar treaties with other nations. Thus the time is likely soon to come when a few of the great nations, being bound to one another by indissoluble chains of peace, will negotiate a general treaty of unlimited arbitration among themselves. Thus will be formed the long-desired League of Peace, and any genuine League of Peace is bound to grow until all the nations of the world enter its prosperous and concordant circle. First, unlimited arbitration treaties with England and France; second, a League of Peace; third, the Federation of the World.

In conclusion, let us give to President Taft all honor for this great moral victory in world statesmanship. It should be a source of pride to all our people that the man who presides over a confederation of forty-six sovereign States—the greatest peace society known to history—should be also the leader of the forty-six sovereign civilized nations in their progress toward peace.

If peace hath her victories no less renowned than war, her greatest victory during the present century, if not during the human era, was all but achieved last Thursday. And when these treaties are finally ratified by our Senate—they are already ratified by the peoples of Britain, France, and America—William Howard Taft will have done more than any other statesman of the world to hasten that day, sure to come, when, as Victor Hugo prophesied, "the only battlefield will be the market opening to commerce and the mind to new ideas."

To the Senate.

From the Independent of August 17.

GENTLEMEN: The President of the United States, acting under the Constitution, has submitted to you for ratification two treaties of peace and friendship with Great Britain and France. These treaties are for the unlimited arbitration of all disputes, even those supposed to involve "national honor," and are generally held to be the farthest steps yet taken in the history of the world toward the goal of universal peace.

It is reported from Washington that you will not ratify these treaties at the present session, that you fear that your rights as an integral part of the treaty-making branch of the Government have been invaded. Your Committee on Foreign Relations has even made the great blunder of reporting the treaties back to you emasculated of a most important provision—the provision which enables the commission of inquiry to send a dispute to arbitration.

It is, of course, your sworn duty to examine the treaties with all care to see that the interests of the people of the United States, as well as your own prerogatives, are properly safeguarded. There can be no objection to your taking all the time you need to make the minutest scrutiny.

But we warn you that the country is in no mood to stand any unnecessary quibblings over Senatorial precedences. You will be held individually and collectively responsible if you attempt to put your dignity above the cause of the world's peace. Do not forget that since you defeated the Olney-Pauncefote treaty of 1897 and the Hay-Pauncefote treaty of 1903 a well-nigh universal sentiment for peace and arbitration has grown up in this country and throughout the world. The churches, the chambers of commerce and boards of trade, the labor unions, the universities, and indeed all interests and classes in the community, are now a unit in this noble and irresistible movement. Even the great mass of the plain people are at last coming to realize who are the ones who undergo the sufferings of war and pay the taxes of armed peace.

We have the honor to present to you this week the views of Prof. John B. Moore, generally considered the greatest international lawyer in America. He thinks the treaties should be ratified. And President Taft himself, in his speech last week at Mountain Lake Park, answered in brief all constitutional objections that you can reasonably make. Said he:

"By this treaty, if it is ratified, the Executive and Senate representing the United States agree to settle all their differences, as described in the treaty, by arbitration or through a commission.

"Should the treaty be ratified, the Senate, exactly as the Executive, will be in honor bound by its obligations in good faith to perform the offices which the main treaty provides shall be performed on the side of the United States, and then to abide the result, and to acquiesce, or, in so far as may be, perform and execute the judgment of the tribunal.

"What is there to prevent the Senate from uniting with the Executive in agreeing to settle future controversies of a given description in a treaty by the judgment of an impartial tribunal, and to submit to that tribunal not only the question how the issue ought to be decided,

but also as a condition precedent, whether the issue is within the terms of the treaty already made?"

If you are willing and have the right to sanction the arbitration of questions that involve the national honor, as you did in the famous Alabama case or the recent Newfoundland fisheries case, there can be no possible constitutional reason why you cannot agree to give your sanction to arbitrate *all such cases in the future*. There is no constitutional difference between making a special and a general treaty.

Thus the only question before you is this: Is the United States ready yet to arbitrate all disputes that may arise between herself and England and France? Mr. Taft and Mr. Knox say yes, our leaders of thought and action say yes, the whole country says yes.

A golden opportunity, therefore, lies before you. The imperishable honor of leading with President Taft in the movement for the abolition of what Thomas Jefferson called "the greatest scourge of mankind" is within your grasp. Unlimited arbitration is the beginning of the end of war.

Let the treaties, therefore, be ratified at the present session. The moral and material benefits which will accrue to our nation and to all mankind for this leadership in the cause of the ages will be beyond human computation.

The General Arbitration Treaty.

IS IT CONSTITUTIONAL?

From the Outlook.

The General Arbitration Treaty provides that all differences arising between the high contracting parties, which are susceptible of decision by the application of the principles of law or equity and which cannot be settled by diplomacy, shall be referred to the permanent Court of Arbitration at the Hague, or to some other arbitral tribunal as may be decided in each case by special agreement, and that the special agreement in each case shall be made on the part of the United States by the President, by and with the advice and consent of the Senate. And it further provides that, in cases in which the parties disagree as to whether or not a difference is subject to arbitration (that is, whether it is susceptible of decision by the application of the principles of law or equity), that question shall be submitted to the Joint High Commission of Inquiry, composed of three "nationals" from each nation; and if all but one of the commissioners decide that the question is susceptible of such decision, their decision shall be binding on both the nations. The Constitution of the United States provides that the President shall "have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." The majority report of the Senate Committee on Foreign Relations, presented by Senator Lodge, holds that the clause in the General Arbitration Treaty referring to the Joint High Commission, with power to settle it, the question whether any particular issue arising between the United States and Great Britain is susceptible of decision by the application of the principles of law or equity, is inconsistent with this provision of the Constitution. "The committee believes that it will be a violation of the Constitution of the United States to

confer upon an outside commission powers which, under the Constitution, devolve upon the Senate. It seems to the committee that the Senate has no more right to delegate its share of the treaty-making power than Congress has to delegate the legislative power." The minority report of the Senate committee, presented by Senators S. M. Cullom and Elihu Root, and approved also by Senator Theodore E. Burton, holds that there is in this proposed treaty nothing inconsistent with the Constitution. "We see no obstacle to the submission of such a question to decision, just as any other question of fact, or mixed fact and law, may be submitted to decision. Such a submission is not delegating to a commission power to say what shall be arbitrated; it is merely empowering the commission to find whether the particular case is one that the President and Senate have said shall be arbitrated."

Upon such a question the laity may well be governed by the authority of three such lawyers as President Taft, Secretary Knox, and Senator Root. But in this case the people need not rest their judgment wholly upon authority. The judgment of these eminent lawyers is abundantly sustained by principle and precedent easily understandable by the non-professional mind. There may be a difference of opinion whether, under the treaty, the three representatives of America on this Joint High Commission would be appointed by the President alone, or by the President by and with the advice and consent of the Senate. We think the advice and consent of the Senate should be secured, but any ambiguity upon this point could easily be removed by amendment if amendment is necessary.

The President and the Senate have a constitutional right to refer any specific question to arbitration. No one doubts this. The right has been exercised too often to be called in question. They have a right to refer any class of questions to arbitration. This right has also been exercised, first by a General Arbitration Treaty with the South American Republics, ratified by the Senate in 1905; later, by a General Arbitration Treaty with Great Britain, ratified by the Senate in 1908, though in this latter treaty the Senate reserved the right to advise and consent to the act of the President in determining whether any specific question came within the exceptions provided for in the treaty. If the President and the Senate have a right to refer each question as it may arise, or, by general treaty, a group of questions, they have the same right to refer all questions. If, in the proposed General Arbitration Treaty with Great Britain, it were simply provided that all differences hereafter arising between the high contracting parties, which it had not been possible to adjust by diplomacy, should be submitted to the permanent Court of Arbitration at the Hague, no one could question the right of the Senate to confirm such a treaty. The real question, and the only question, presented by the majority of the Senate Committee on Foreign Relations is whether, in case general exceptions are made to the Arbitration Treaty, the Senate must, as a body, pass on each question which arises, in order to determine whether it comes within the specified exceptions.

The argument of the Senate committee that "the Senate has no more right to delegate its share of the treaty-making power than Congress has to delegate the legislative power," is really, in the light of the prece-